

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GILLIAN LAMBEY,

Plaintiff,

vs.

STATE OF NEVADA, *ex rel*, DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Defendant.

Case No. 2:07-cv-01268-RLH-PAL

**REPORT OF FINDINGS
AND RECOMMENDATION**

On December 29, 2009, the court held a hearing on an Order to Show Cause (Dkt. #50) why Plaintiff's counsel, Ms. Charmaine Clark, should not be removed from this case for her various failures to respond to court orders, appear for hearings when required, and show cause when ordered. The order to show cause directed that attorney Clark had until December 22, 2009 in which to show cause. No response to the order to show cause was filed. Counsel received electronic notice of the order to show cause on December 16, 2009 at the e-mail address she provided to the court. See Notice of Electronic Filing for Dkt. #50.

FINDINGS

1. On October 5, 2009, the court held a hearing on Defendant State of Nevada, Department of Health and Human Services' Motion for Sanctions (Dkt. #35). The motion sought an order sanctioning Plaintiff Gillian Lambey for her failure to appear for her deposition and compelling plaintiff to attend her next properly noticed deposition. The motion, which was supported by the affidavit of counsel for Defendant, Shannon C. Richards, represented that on July 31, 2009, Ms. Richards sent Ms. Clark a letter requesting a convenient date in August 2009 for Plaintiff's deposition. Ms. Clark did not respond.

1 2. On July 27, 2009, Ms. Richards contacted Ms. Clark's office to discuss Plaintiff's
2 deposition and left a message for Ms. Clark. However, Ms. Richards did not receive a return call from
3 Ms. Clark. Counsel for Defendant set Plaintiff's deposition for August 17, 2009 at 9:00 a.m. and filed a
4 notice of taking the deposition.

5 3. On August 11, 2009, counsel for Plaintiff requested a continuance of Plaintiff's
6 deposition to enable her to obtain a less expensive airline ticket to attend the deposition. Ms. Clark also
7 claimed that she had moved offices and had not received correspondence or discovery in this case. Ms.
8 Clark stated that the correspondence sent to her via facsimile was not received because her fax machine
9 was also "non-operational;" however, counsel for Defendant received confirmations that all facsimile
10 transmissions to Ms. Clark's office had been received. Ms. Clark did not respond to defense counsel's
11 inquiries concerning whether she had received the electronic filing notices from the court in this matter.
12 Counsel for Defendant agreed to Ms. Clark's request to continue the deposition and reset the deposition
13 to August 26, 2009 as Ms. Clark requested.

14 4. On August 25, 2009, Ms. Clark left a voicemail for defense counsel, confirming
15 Plaintiff's deposition on August 26, 2009 and stating that Ms. Clark had an early morning flight.
16 Despite these communications, neither Ms. Clark nor the Plaintiff appeared for the scheduled
17 deposition.

18 5. Counsel for Defendant waited with the court reporter for seventy minutes for Ms. Clark
19 and Plaintiff to arrive and made a record concerning their failure to appear. See Errata (Dkt. #37) at
20 Exhibit A.

21 6. On September 23, 2009, the court entered an Order (Dkt. #39) setting a hearing on
22 Defendant's Motion for Sanctions (Dkt. #35) and allowed Ms. Clark to appear telephonically. The
23 Order (Dkt. #35) directed counsel for Plaintiff to show cause why sanctions should not be imposed for
24 Plaintiff's failure to appear at the scheduled deposition and stated that failure to comply with the order
25 and/or failure to attend the hearing "will result in additional sanctions up to and including a
26 recommendation to the district judge of case dispositive sanctions for the plaintiff's failure to engage in
27 discovery, failure to attend her duly noticed deposition, and counsel's failure to respond to the motion
28 and the court's order." Order (Dkt. #39) at 2:27-3:2.

1 7. The Order (Dkt. #39) also directed Ms. Clark to obtain local counsel in compliance with
2 Local Rule IA 10-1(b) on or before October 2, 2009. To date, no filing has been made with the court
3 indicating Plaintiff's counsel's compliance with this provision of the Order (Dkt. #39).

4 8. On October 5, 2009, the courtroom deputy attempted to contact Ms. Clark telephonically
5 at the number listed for her on the court's docket. The courtroom deputy called twice and left two
6 voicemails for Ms. Clark. Neither was returned. Counsel for Defendant was present. Plaintiff did not
7 appear. The court indicated that it was unclear whether the failure to engage in discovery was the
8 Plaintiff's or her counsel's, noting it is unclear whether Ms. Clark had communicated with Plaintiff.
9 The court stated it was not inclined to recommend case dispositive sanctions without a showing that
10 Plaintiff herself was not cooperating with discovery.

11 9. At the October 5th hearing, counsel for Defendant indicated that Plaintiff was still
12 employed with Defendant, and the court required defense counsel to provide the Clerk of Court with
13 Plaintiff's address so that she could be served with the court's recent orders and be made aware of the
14 status of her case.

15 10. On September 23, 2009, counsel for defendant filed a Motion for Summary Judgment
16 (Dkt. #38) in this matter.

17 11. On October 15, 2009, Ms. Clark filed a series of papers, including: (a) Motion for
18 Extension to File Response to Order to Show Cause (Dkt. #42); (b) Motion for Extension of Time to
19 File Response to Motion for Summary Judgment (Dkt. #43); (c) Motion to File Sealed Affidavits, for
20 Protective Order, and for Closed Hearing (Dkt. #44); (d) Affidavit of Charmaine L. Clark (Dkt. #45);
21 and (e) Motion for Reconsideration (Dkt. #46). These papers represented that in order to respond to the
22 order to show cause, Ms. Clark needed to provide attorney-client privileged information to explain her
23 failures to respond to numerous court orders and to appear in court when required. She asserted she
24 was being stalked by a mentally disturbed former client, and she was unable to be in her law office. In
25 addition, she stated there was private medical information that would explain her absence.

26 12. On October 20, 2009, the court conducted a status conference in this matter and found
27 that Ms. Clark had not responded to the Motion for Summary Judgment (Dkt. #38) or an Order to Show
28 Cause (Dkt. #39) entered against her for her failure to appear at the October 5, 2009 hearing.

1 13. Although Plaintiff appeared at the October 20, 2009 hearing, Ms. Clark did not. On the
2 morning of the hearing, Ms. Clark contacted the Clerk of the Court at 7:00 a.m. and left a number
3 where she could be reached. That number was different than the number she provided in her Affidavit
4 (Dkt. #45). The courtroom deputy made numerous calls to Ms. Clark at both numbers she provided,
5 before and during the hearing. Ms. Clark did not answer the phone, but the courtroom deputy left
6 voicemails on both lines that were never returned.

7 14. The court provided Plaintiff with a copy of the October 16, 2009 Order (Dkt. #39).
8 Plaintiff stated that she was in contact with her lawyer, and she expected Ms. Clark to appear
9 telephonically at the hearing.

10 15. At the October 20th hearing, the court advised Plaintiff why Defendant filed its Motion
11 for Sanctions (Dkt. #35) and inquired why Plaintiff failed to appear at her scheduled deposition.
12 Plaintiff informed the court that Ms. Clark stated the deposition could not go forward because it would
13 violate a court order, and Ms. Clark would file something with the court to clarify the matter. The court
14 advised Plaintiff that nothing had been filed by Ms. Clark.

15 16. Despite the court's concern that Ms. Clark was not representing Plaintiff's best interests,
16 the court permitted Ms. Clark to respond to the order to show cause and file any affidavit under seal.
17 The court granted Ms. Clark a protective order, and allowed Ms. Clark an extension of time until
18 November 10, 2009 to respond to Defendant's Motion for Summary Judgment. See Dkt. #48.

19 17. Ms. Clark did not file a response to Defendant's Motion for Summary Judgment (Dkt.
20 #38) on November 10, 2009 or request a further extension.

21 18. Despite the extension granted by the court, Ms. Clark did not file a response to the Order
22 to Show Cause on October 30, 2009 or request a further extension.

23 19. Ms. Clark did not file any sealed affidavits to support her response to the Order to Show
24 Cause as she requested to do.

25 20. Ms. Clark did not show cause on October 30, 2009 for her failure to appear at the
26 October 20th hearing and for her failure to be available telephonically on that date. She did not request
27 any extension of time in which to do so.

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1 21. On December 15, 2009, the court received a letter from Plaintiff regarding her failure to
2 appear at a settlement conference scheduled for December 1, 2009. The letter apologizes and explains
3 that Plaintiff has attempted to contact Ms. Clark since November 24, 2009, to no avail. Plaintiff states
4 that Ms. Clark has not returned any of her phone calls, and she has no idea what is going on with her
5 case. She also indicated she was in the process of trying to retain new counsel.

6 22. The court set the December 1, 2009 settlement conference on August 3, 2009.
7 Defendant submitted its confidential settlement statement as required. Plaintiff did not. Despite nearly
8 four months' notice, neither Plaintiff, Ms. Clark, Defendant, or defense counsel appeared on
9 December 1, 2009 for the settlement conference.

10 23. The court entered an Order to Show Cause (Dkt. #50), finding that since the court's
11 October 21, 2009 Order (Dkt. #48), Ms. Clark had not: (a) responded to the order to show cause;
12 (b) filed a response to Defendant's motion for summary judgment; (c) filed any sealed affidavits
13 explaining her failures as she requested; or (d) shown cause for her failure to appear at the October 20,
14 2009 hearing. Moreover, Ms. Clark did not obtain local counsel as required by the Local Rules for out-
15 of-state attorneys practicing in this District. As a result, the court again ordered Ms. Clark to show
16 cause by December 22, 2009 why she should not be removed as counsel of record and set a hearing for
17 December 29, 2009. The court warned Ms. Clark that "failure . . . to comply with this order and failure
18 to attend the hearing will result in a recommendation to the district judge that [Ms. Clark] be removed
19 as counsel of record in this case and that her privilege to practice in federal court in this district be
20 revoked." See Order to Show Cause, Dkt. #50).

21 24. On December 29, 2009, Ms. Clark failed to appear at the show cause hearing. Plaintiff
22 and counsel for Defendant were present. Plaintiff stated she had not been in contact with Ms. Clark
23 since November 14, 2009, and Ms. Clark's phone was no longer accepting voicemails. Plaintiff
24 indicated she no longer wanted Ms. Clark to represent her.


25 25. At the December 29th hearing, the court outlined Ms. Clark's various failures to appear
26 and respond to motions and orders of this court. The court found that Ms. Clark, rather than Plaintiff,
27 was responsible for the delays and failures to respond or appear.

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1 For all the foregoing reasons,

2 **IT IS RECOMMENDED** that Ms. Charmaine Clark's privilege to practice law in federal
3 district court in the District of Nevada be revoked due to her repeated failures to comply with court
4 orders, respond to court orders to show cause, respond to various pretrial motions, engage in the
5 discovery process, and appear for court when required.

6 Dated this 19th day of January, 2010.

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8 
9 PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE